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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,664	03/25/2004	Percy Bennwik	31477-2A	6211
24256	7590	04/11/2006	EXAMINER	
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			BOGART, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,664

Applicant(s)

BÉNNWIK ET AL.

Examiner

Michael G. Bogart

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39,44-51 and 53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39,44-51 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☒ Certified copies of the priority documents have been received in Application No. 09/616,638.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 30 January 2006.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because it exceeds 150 words in length.

Correction is required. See MPEP § 608.01(b).

The status of any U.S. patent applications that the instant invent claims priority to should be updated.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15, 17, 19-21, 27, 28, 30-35, 44, 48-51 and 53 are rejected under 35 U.S.C. § 102(b) as being anticipated by Embleton *et al.* (WO 96/06581 A1).

Regarding claim 44, Embleton *et al.* teach a method for manufacture of a container containing liquid (204), the container comprising

a) a front wall (208) having or surrounding a cavity (202) corresponding to the form of an open vessel,

b) an opening (210) in the front wall (208) adapted for ejection of the liquid (204) from the container, said opening defining a container axis,

c) optionally a sealing (212) over the opening (210) adapted for temporary use, and

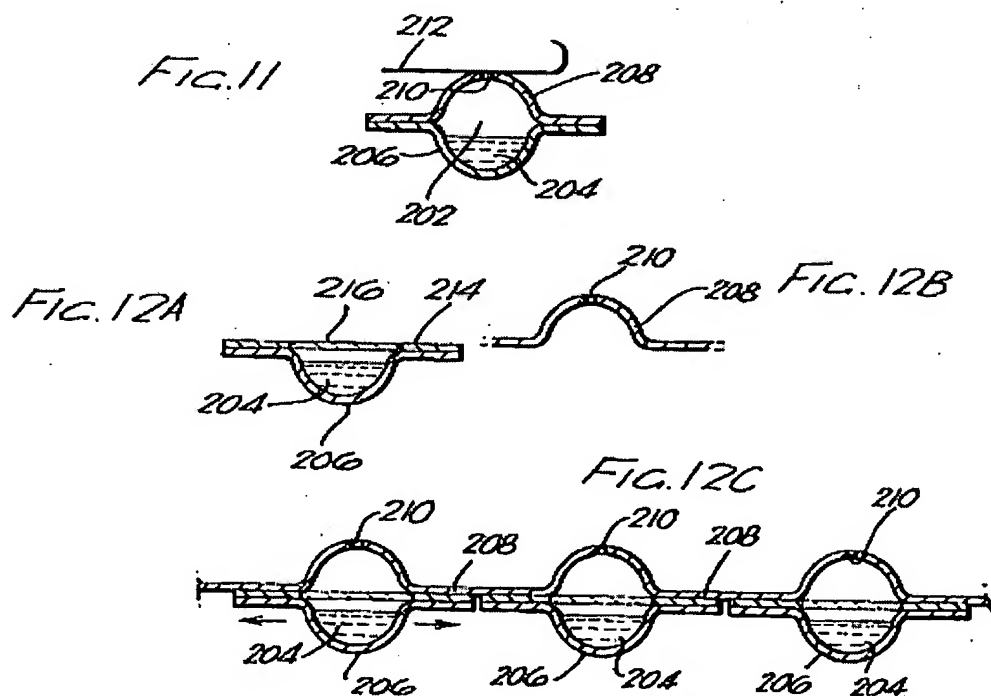
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d) a rear wall (206) closing and sealing the open part of the front wall (208) vessel to confine a space for the liquid (204) in the container, the rear wall (206) running at least partially perpendicular to the container axis and being displaceable or deformable for movement towards the opening to pressurize the container liquid (204), the method comprising

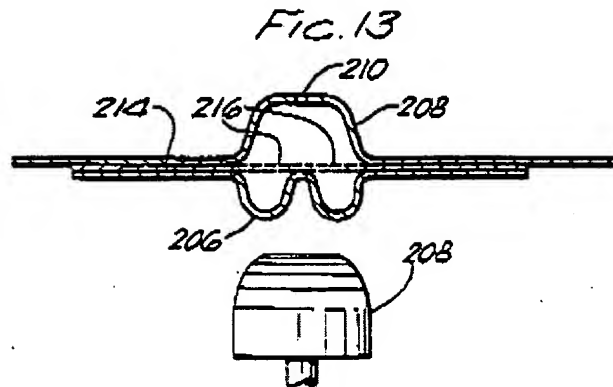
forming a front wall (208) with a cavity (202) in the form of a vessel with an opening (210) connecting the vessel with the front wall front surface,

introducing liquid (204) into the vessel cavity (202), and

attaching and adhering a flat or single-curve rear wall (206) film to the vessel cavity (202) open part to enclose the liquid (204) in the container (page 15, lines 10-26)(see also, page 15, lines 10-page 17, line 19; page 18, lines 15-31; page 19, line 35-page 20, line 11)(see figures 11-12C, below).



Regarding claim 1, Embleton *et al.* teach a rear wall deformable to substantially fill out the container cavity (202)(see figure 13, below).

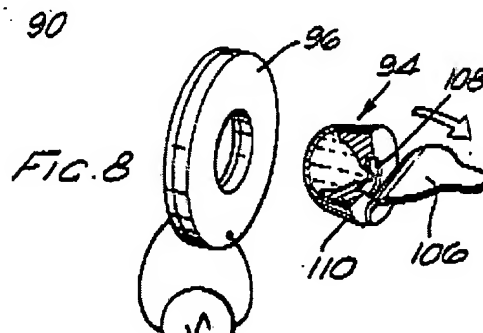


Regarding claim 2, see Fig. 11, above.

Regarding claim 3, Embleton *et al.* teach a cavity (202) that has little or no undercut parts when seen from the rear.

Regarding claim 4, Embleton *et al.* teach a front wall (208) that has a roughly constant thickness (figure 11).

Regarding claim 5, Embleton *et al.* teach a front wall (110) having a thickness which increases in a direction away from the center axis (see figure 8, below).



Regarding claims 6 and 7, Embleton *et al.* teach that the front or rear surface of the front wall (208) is substantially flat or single-curved (figure 11).

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Regarding claim 8, Embleton *et al.* teach that the front and rear surfaces of the front wall (208) are substantially parallel or concentric (figure 11).

Regarding claim 9, Embleton *et al.* teach a front wall (208) has an overall shape of a plate or a cylinder part (figure 13).

Regarding claim 10, Embleton *et al.* teach an opening (210) that has a cross-section that is roughly constant (figure 11).

Regarding claims 11 and 12, Embleton *et al.* teach an opening (210) that may assist in atomizing a liquid or in forming a coherent liquid stream (page 9, lines 24-29).

Regarding claim 13, Embleton *et al.* teach a front wall (110) formed with a cut-out area (108) around the opening (figure 8).

Regarding claims 14, 15 and 17, Embleton *et al.* teach multiple containers having front or back surfaces arranged in the same flat or single-curved plane wherein (see figure 12C).

Regarding claim 19, Embleton *et al.* teach a unit that is substantially rigid and self-bearing (page 14, lines 10-15).

Regarding claim 20, 21 and 28, Embleton *et al.* teach multiple containers having front or back walls having the claimed shapes (see figure 12C).

Regarding claim 27, Embleton *et al.* teach a rear wall (206) that is folded (see figure 13, above).

Regarding claim 30-32, Embleton *et al.* teach a rear wall (206) that is a foil laminate (page 15, lines 10-21). It is noted that metal foils are inherently inelastic in the conditions of use taught by the reference.

Regarding claims 33-35, Embleton *et al.* teach a temporary sealing (212).

Regarding claim 48, Embleton *et al.* teach that the sealing film is adhered over the open part (page 15, lines 10-26).

Regarding claims 49-51, Embleton *et al.* teach multiple cavities (204) covered by the rear wall film (206)(see figure 12C, supra).

Regarding claim 53, see figure 11, supra.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 16, 36-39, 46 and 47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Embleton *et al.*

Regarding claim 16, Embleton *et al.* teach a front wall surface cover sheet (212)(figure 11). Embleton *et al.* also teach multiple linked containers (figure 12C). Embleton *et al.* do not expressly show that the sheet (212) is attached to multiple containers.

"[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). MPEP § 2144.01.

Given the context of the entire Embleton *et al.* disclosure, it implies that in a embodiment having multiple containers, that if a sheet (212) were to attached to any of the containers, it would be attached to multiple or all of the containers.

Regarding claims 36-39, Embleton *et al.* expressly teach the claimed invention except for the specific distance between the front and rear walls. Merely changing the size of a prior art device is not sufficient to patentably distinguish the claimed invention over the prior art. *Gardener v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984). MPEP 2144.04 IV.

Regarding claims 46 and 47, Embleton *et al.* do not teach adhering the rear wall by welding.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to substitute welding for adhesive attachment of the film because Applicant has not disclosed that welding provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore,

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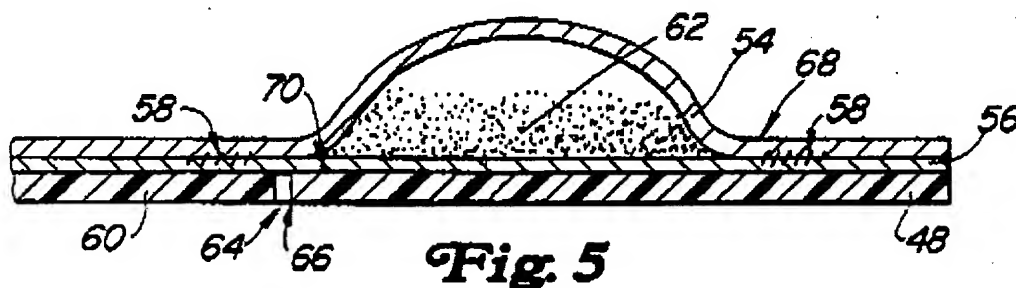
would have expected Applicant's invention to perform equally well with adhesive attachment of the film.

Therefore, it would have been an obvious matter of design choice to modify Emberton *et al.* to obtain the invention as specified in claims 46 and 47.

Claims 18 and 22-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Embleton *et al.* in view of Eisele *et al.* (US 5,622,166 A).

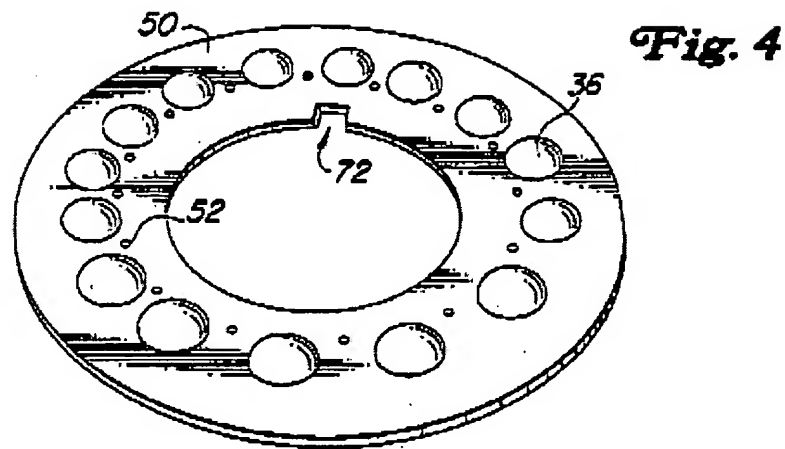
Regarding claim 18, Embleton *et al.* fail to teach rear wall surfaces of multiple containers covered by a single sheet.

Eisele *et al.* teach such a container having a single sheet (60) which covers the rear walls (see figure 5, below). This sheet is part of a cartridge mechanism for holding and dispensing multiple containers.



At the time of the invention, it would have been obvious to adapt the container of Embleton *et al.* such that the container is used in a cartridge device as taught by Eisele *et al.* in order to provide facilitated dispensing of the contents of the containers.

Regarding claims 22-24, Eisele *et al.* teach a overall disk structure with containers concentrically located thereon (see figure 4, below).



Claims 25 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Embleton *et al.* in view of Casper *et al.* (US 5,415,162 A).

Embleton *et al.* does not teach multiple containers arranged to have an overall cylindrical shape.

Casper *et al.* teaches multiple powder containers having an overall cylindrical shape (see figure 1, below).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to manufacture the containers of Casper *et al.* according to the method taught by Embleton *et al.* in order to provide a container that stays sealed until the bottom wall has pressure applied to it.

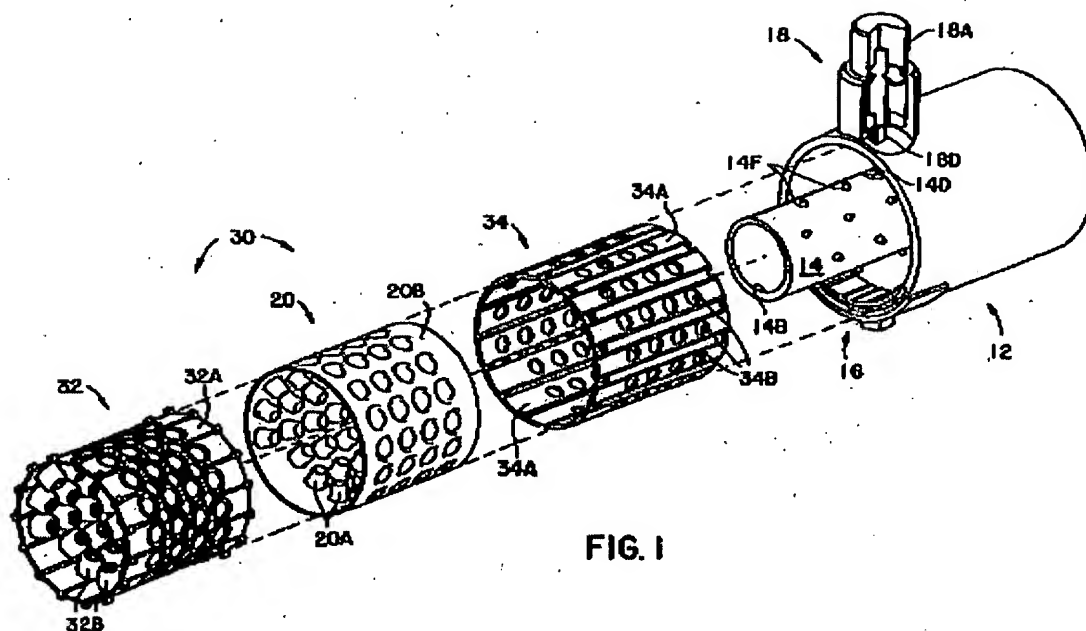
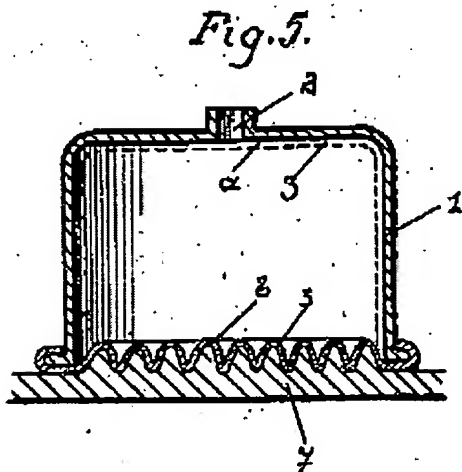


FIG. 1

Claim 29 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Embleton *et al.* in view of Bergerioux (US 2,208,744).

Embleton *et al.* do not teach an elastic rear wall.

Bergerioux teaches an elastic rear wall (6)(page 2, lines 10-18)(figure 5).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the elastic rear wall of Bergerioux to the container of Embleton *et al.* in order to provide a rear wall which can be pressed without rupturing.

Claim 45 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Embleton *et al.* in view of McGill (US 5,893,485 A).

Embleton *et al.* do not teach injection molding to form the front wall.

McGill teaches a dispensing mechanism made by injection molding (column 2, lines 34-38).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to use injection molding as taught by McGill to produce the container of Embleton *et al.* in order to provide a well known and effective way of making plastic components.

Response to Arguments

Applicant's arguments filed 25 January 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that "single-curved" means "any form of a plane or surface obtainable in the same plane without stretching or shrinking any part thereof in any direction within the plane) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, Embleton *et al.* teach a rear wall film that has a single curve in, for example, an X direction. It has an additional single curve in a Y direction that is in a Y direction that is perpendicular the X-direction. Applicants' employ the transition phrase "comprising". The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., > Mars Inc. v. H.J. Heinz Co., 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004) ("like the term comprising,' the terms containing' and mixture' are open-ended."). MPEP § 2113.03.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

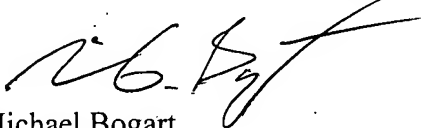
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

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In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
4 April 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER
